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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,899	02/05/2004	Steven Ginsberg	PC20008A	5352

7590 08/26/2005

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EXAMINER

BUI, LUAN KIM

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 08/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/772,899

Applicant(s)

GINSBERG ET AL.

Examiner

Luan K. Bui

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/11/05</u> . | 6) <input type="checkbox"/> Other: _____ |

Continued Prosecution Application

The Request for Continued Examination (RCE) filed on 7/25/2005 under 37 CFR 1.114 based on parent Application No. 10/772,899 is acceptable and a RCE has been established. An action on the RCE follows.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 22-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niwa (5,613,779) in view of Leung et al. (6,596,298; hereinafter Leung'298) or Robertson (6,516,950) and Baggett (4,811,845). Niwa discloses a package comprising a packet (104, Figure 4) having a pouch portion (on one side of a tear-facilitating means, 5b) that holds a single dose of a personal care product, a tab portion (on an opposite side of the tear-facilitating means, 5a) releasably connected to the pouch portion and the pouch portion having a front edge remote from the tab portion (5b). The front edge of the packet can be gripped to separate the pouch portion from the tab portion. Niwa also discloses the other limitations of the claim except for at least two packets/plurality packets being uniformly stacked in a non-staggered arrangement and the personal care product being a film dosage form.

Leung'298 teaches a single dose of a personal care product is in a film dosage form. Robertson shows a credit card-sized package (10) for holding a single dose of a personal care product in

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wafer form/film form comprising a tray (12) for holding a medicament wafer and a cover (48) for closing the tray.

Baggett suggests a plurality of substantially identical packets (10, 12) for holding medication and the packets are uniformly stacked in a non-staggered arrangement (Figure 1).

It would have been obvious to one having ordinary skill in the art in view of Leung'298 or Robertson and Baggett to modify the packet of Niwa so the personal care product comprises a film dosage form as taught by Leung'298 or Robertson to reduce the thickness of the packet and for fast dissolving and it comprises a plurality of substantially identical packets and the packets are uniformly stacked in a non-staggered arrangement as taught by Baggett for better packaging during storage and transportation. It is so old and conventional to one having ordinary skill in the art that during storage and/or transportation, a plurality of substantially identical packets of Niwa are stacked in a container to reduce the cost of storage and/or transportation.

As to claims 23-27 and 31, Niwa discloses the packet comprises two flexible sheets (103a, 103b) laminated together so as to define a closed pocket between the sheets and at least one tear-facilitating means (1-3) to form a tear line.

As to claims 28-30, Niwa as modified further fails to show the front edge of each pouch portion comprises second tear-facilitating means, it would have been obvious to one having ordinary skill in the art in view of Niwa as modified so the front edge of each packet includes second tear-facilitating means similar to the tear facilitating means (1-3) to provide more convenience for the

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user and since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

3. Claims 21, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 22 above, and further in view of The International Publication Number WO 03/094823 to Walding. Niwa further fails to show a container to receive the stack comprises a tray and a cover. Walding teaches a container (10) for holding blister packs comprising a tray (13, 16) and a cover (12). The blister packs are adapted to hold pills or tablets. It would have been obvious to one having ordinary skill in the art in view of Walding to modify the package of Niwa so it comprises a container for receiving the stack of the packets for better protecting the packets during storage and/or transportation. As to claim 21, Walding teaches the container comprises the tray (13, 16) and the cover (12). As to claim 34, Walding teaches the container (10) comprises two ends (along lines 14 and 15), a fixed cover (13) that covered one container end and a movable cover (12) hingedly connected to the container.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 21-34 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,708,826. Although the conflicting claims are not identical, they are not patentably distinct from each other because the structural limitations in the claims of the instant patent application are fully disclosed by the patents.

Response to Arguments


Applicant's arguments with respect to 7/25/2005 have been considered but are deemed to be moot in view of the new grounds of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is (571) 272-4552. If in receiving this Office Action, it is apparent to Applicant that certain documents are missing from the record for example copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Ms. Errica Miller at (571) 272-4370.

Any inquiry of a general nature or relating to the status of this application should be directed to the Customer Service whose telephone number is (703) 306-5648. Facsimile correspondence for this application should be sent to (571) 273-8300 for Formal papers and After Final communications.

lkb
August 24, 2005



Luan K. Bui
Primary Examiner